



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO/163493

PRELIMINARY RECITALS

Pursuant to a petition filed January 26, 2015, under Wis. Admin. Code § HA 3.03, to review a decision by the Kenosha County Human Service Department in regard to Child Care, a hearing was held on March 19, 2015, at Kenosha, Wisconsin.

The issue for determination is whether the agency correctly assessed an overpayment in the amount of \$1,319.19 for child care from September 7, 2014 through November 30, 2014 when the petitioner was not an approved activity.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

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Respondent:

Department of Children and Families
201 East Washington Avenue, Room G200
Madison, Wisconsin 53703

By: Karen Mayer

Kenosha County Human Service Department
8600 Sheridan Road
Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:

Corinne Balter

Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Kenosha County.
2. There was an overpayment of \$1,319.19 for child care between from September 7, 2014 through November 30, 2014. This overpayment is the result of the petitioner's child attending child care

while the petitioner was not an approved activity. The total overpayment is broken down as follows:

- September 7, 2014 to September 13, 2014 - \$86.22
 - The petitioner's child attended child care for 9 hours. The agency paid \$86.22 for this child care. The petitioner was not in an approved activity during any of these child care hours causing an overpayment in the amount of \$86.22.
 - September 14, 2014 to September 27, 2014 - \$95.80
 - The petitioner's child attended child care for 14 hours. The agency paid \$134.12 for those child hours. This is a rate of \$9.58 per hour. The petitioner was only in approved activity for 4 of the 14 hours. Thus, 10 of the hours is an overpayment. The total cost to the agency for those 10 hours is \$95.80 (10 x \$9.58).
 - September 28, 2014 to October 4, 2014 - \$303.24
 - The petitioner's child attended child care for 20 hours. The agency paid \$303.24 for this child care. The petitioner was not in an approved activity during any of these child care hours causing an overpayment in the amount of \$303.24.
 - October 5, 2014 to October 11, 2014 - \$106.14
 - The petitioner's child attended child care for 22 hours. The agency paid \$333.57 for these child care hours. This is a rate of \$15.16 per hour. The petitioner was only an approved activity for 15 of the 22 hours. Thus, 7 hours is an overpayment. The total cost to the agency for those 7 hours is \$106.14 (7 x \$15.16).
 - October 12, 2014 to October 18, 2014 - \$333.57
 - The petitioner's child attended child care for a total of 23 hours. The agency only authorized 22 of the 23 hours, and therefore only paid for 22 hours of child care. The total of cost of the 22 hours was \$333.57. The petitioner was not an approved activity during any of these 22 hours causing an overpayment in the amount of \$333.57.
 - October 19, 2014 to October 25, 2014 - \$212.27
 - The petitioner's child attended child care for a total of 22 hours. The agency paid \$333.57 for these 22 hours of child care. This is a rate of \$15.16 per hour. The petitioner was only an approved activity for 8 of the 22 hours. Thus, 14 hours is an overpayment. The total cost to the agency for these 14 hours is \$212.27 (14 x \$15.16).
 - October 26, 2014 to November 1, 2014 - \$181.95
 - The petitioner's child attended child care for a total of 23 hours. Only 22 of the 23 hours were authorized, and thus the agency only paid for 22 hours. The total cost of the 22 hours of child was \$333.57. This is a rate of \$15.16 per hour. The petitioner was only in an approved activity for 10 of the 22 hours. This caused an overpayment for 12 hours. The total cost to the agency for these 12 hours is \$181.95 (12 x \$15.16).
3. On January 12, 2015 the agency sent the petitioner a notice of overpayment with a worksheet attached showing how they calculated the overpayment as explained above.
 4. On January 27, 2015 the Division of Hearings and Appeals received the petitioner's request for fair hearing.

DISCUSSION

The purpose of the Wisconsin Shares Child Care Program is to provide child care assistance for working low-income families. *Child Care Manual* § 1.1.1. The Wisconsin Shares Child Care Program is regulated under DCF 201 Administration of Child Care Funds (administrative code) and Wisconsin Statutes s. 49.155 Stats. *Child Care Manual* § 1.1.1.

In order to qualify for child care assistance, the recipient must be in an “approved activity.” *Child Care Manual* § 1.5.0 (viewable online at <http://dcf.wisconsin.gov/childcare/wishares/manual.htm> (last viewed May 2015)). The term “approved activity” is a term of art in child care assistance cases. *Id.* Approved activities include employment with a qualified employer or if the parent needs the care to attend Wisconsin Works (W-2) approved school, to work, or to participate in W-2 activities. *Id.* at § 1.5.3.1 and § 1.5.4.

If the agency pays for child care when a person is not in an approved activity, the applicable overpayment rule requires the agency to establish and recover this overpayment, regardless of fault. Wis. Admin. Code §DCF 201.04(5)(a). See in accord, *Child Day Care Manual*, §2.3.1. This provision may be viewed online at <http://dcf.wisconsin.gov/childcare/wishares/manual.htm> (last viewed May 2015).

In this case the petitioner was a participant in the Wisconsin Works (W-2) program. The petitioner signed three employability plans: one on September 3, 2014, another on October 6, 2014, and another on October 20, 2014. The petitioner qualified for child care while she participated in her W-2 activities. The overpayment in this case is caused for times that the petitioner sent her child to child care, and did not participate in a W-2 activity. The petitioner explained that during some of this time she had a medical issue, and was unable to participate in her W-2 activities. Assuming this is true, the petitioner would not have qualified for subsidized child care during this time. The petitioner further stated that she volunteered as an interpreter at a nail salon during some of this overpayment period. This was not an approved activity, and therefore the petitioner was not eligible for subsidized child care during this time.

The petitioner admits that there was an overpayment, but argues that she is not at fault because she was either sick or unaware of her W-2 program requirements. I do not find the petitioner’s explanation that she did not understand the requirements of the W-2 program credible. However, even if this explanation is credible, the statutes and policy direct the agency to establish and recover overpayments regardless of fault. Thus, even if the petitioner is correct and the overpayment is due to an agency’s failure, the agency still must establish and collect the overpayment.

I further note that I reviewed the agency’s overpayment calculations in this case, and that the calculations are correct. The agency correctly gave the petitioner credit for hours when she was an approved activity, and calculated an overpayment for the hours when she did not participate in an approved activity.

CONCLUSIONS OF LAW

The agency correctly calculated and established an overpayment in the amount of \$1,319.19 for child care from September 7, 2014 through November 30, 2014 when the petitioner was not an approved activity.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 1st day of May, 2015

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on May 1, 2015.

Kenosha County Human Service Department
Public Assistance Collection Unit
Child Care Fraud